

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	CRIMINAL NO. _____
v.	:	(Mail Fraud Affecting a Financial Institution, 18 U.S.C. § 1341;
BEVERLY BAKER	:	Wire Fraud Affecting a Financial Institution, 18 U.S.C. § 1343;
THOMAS BRAY	:	Bank Fraud, 18 U.S.C. § 1344)
VICTOR GIORDANI, JR.		
MICHELE A. TOBIN		

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INDICTMENT

The Grand Jury for the District of Maryland charges:

1. At all times relevant to this Indictment, Mercantile-Safe Deposit and Trust Company ("Mercantile") was a financial institution which maintained its headquarters at Two Hopkins Plaza in Baltimore, Maryland. The deposits of Mercantile were insured by the Federal Deposit Insurance Corporation. Mercantile provided a full range of financial services, including commercial banking, lending and credit facilities for its customers.

2. At all times relevant to this Indictment, The Abell Foundation, Inc. was a nonprofit Delaware corporation with its principal place of business in Baltimore, Maryland. The Abell Foundation operated the Abell Venture Fund, which provided investment capital to small and emerging businesses in the Baltimore metropolitan area.

3. At all times relevant to this Indictment, Smith Whiley & Company was a private investment firm, incorporated in Delaware and headquartered in Hartford, Connecticut. Smith Whiley provided capital for small-to middle-market companies nationwide, and

managed two investment partnerships: The Pelham Fund and the Bon Secours Community Investment Fund, a licensed Small Business Investment Company.

4. At all times relevant to this Indictment, Network Technologies Group, Inc. (“NTG, Inc.”) was a Delaware corporation, founded in October, 1998. NTG, Inc. maintained its principal place of business in Baltimore, Maryland, and engaged in the business of providing services to the communication, cable television and utility industries. NTG, Inc. was an outgrowth of Network Technologies Group, LLC, (“NTG, LLC”) a limited liability company formed in 1997 which continued to exist after the formation of NTG, Inc. The Abell Foundation provided some of the initial start-up capital for NTG, Inc. in exchange for a percentage of the stock in NTG, Inc.

5. Beginning in approximately December, 1998, Mercantile provided NTG, Inc. with a revolving line of credit for working capital and additional financing for equipment purchases. Pursuant to a financing agreement executed by the parties, the working capital revolving line of credit was secured by a first lien on 80% of certain account receivables of NTG, Inc. Over time, Mercantile authorized increases in the revolving line of credit to \$3.5 million. As part of this financing arrangement, NTG, Inc. was periodically required to provide to Mercantile a “borrowing base certificate” reporting, among other things, the dollar amount of eligible account receivables in order to calculate the available limit on the credit line.

6. At all times relevant to this Indictment, the defendant **MICHELE A. TOBIN** was one of the founders and the Chief Executive Officer of NTG, Inc., as well as a member of the Board of Directors. As the CEO, **MICHELE A. TOBIN** was responsible for the day-to-day operations of the company.

7. At all times relevant to this Indictment, the defendant **VICTOR GIORDANI, JR.** was the Chief Operating Officer of NTG, Inc., a member of its Board of Directors, and a principal in NTG, LLC.

8. At all times relevant to this Indictment, the defendant **THOMAS BRAY** was the Chief Financial Officer of NTG, Inc. In that position, the defendant **THOMAS BRAY** was responsible for the financial affairs of the company, including the proper recording and disclosure of the company's financial transactions.

9. At all times relevant to this Indictment, the defendant **BEVERLY BAKER** was the Controller of NTG, Inc. In that position, the defendant **BEVERLY BAKER** was responsible for the accounts payable and other financial aspects of NTG, Inc.

10. From in or about December, 2000 through and including July, 2002, in the State and District of Maryland,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property of Mercantile-Safe Deposit and Trust Company, Smith Whiley & Company, and the Abell Foundation, and affected a financial institution, by materially false and fraudulent pretenses, representations, and promises, as set forth more fully below.

THE SCHEME TO DEFRAUD

11. It was a part of the scheme and artifice to defraud that, beginning in December, 2000 and again in December, 2001, various account payables reflecting financial obligations of NTG, Inc. were intentionally not entered into the company's accounting system in order to give the appearance that the company was operating more profitably than it actually was. These hidden expenses were not disclosed to the company's outside accounting firm which prepared the company's year-end financial statements. As a result of this artifice, approximately \$1 million in payables was not reflected in the company's financial statement for the year ending December 31, 2001.

12. It was a further part of the scheme and artifice to defraud that certain payments from customers to NTG, Inc. were diverted and deposited to the bank account of NTG, LLC. The payments were diverted to prevent Mercantile from gaining access to the funds at a time when NTG, Inc.'s line of credit with Mercantile was overdrawn. In addition, by diverting the payments on the accounts receivable, the books of NTG, Inc. falsely overstated the

amount of receivables due to the company.

13. It was a further part of the scheme and artifice to defraud that false entries were made in the account receivable records of NTG, Inc. giving the false appearance that invoices had been sent to customers for work performed, which in fact had not been performed. In addition, other false entries were made to create the false impression that certain jobs were eligible to be used as collateral for the line of credit with Mercantile.

14. It was a further part of the scheme and artifice to defraud that, as a result of the false and fraudulent accounting for receivables described in paragraphs 12 and 13, above:

(a) NTG, Inc. provided false and fraudulent information to Mercantile on the “borrowing base certificates” which were provided to the bank and used by the bank to calculate the amount of credit to extend to NTG, Inc.; and

(b) the financial statements for NTG, Inc. for the year ended December, 2001 fraudulently reflected more than \$1 million in account receivables which were not actually due to the company.

15. It was a further part of the scheme and artifice to defraud that, beginning in the Spring of 2001, NTG, Inc. retained the services of a local brokerage firm to assist the company in raising additional capital for NTG, Inc. The brokerage firm prepared a private placement memorandum describing the company and its financial condition. The brokerage firm was provided with the false and fraudulent financial statement of NTG, Inc. for the year

end December, 2001, and subsequent false monthly financial statements. The brokerage firm unwittingly disseminated the fraudulent financial statements in connection with the private placement memorandum to solicit investors for NTG, Inc.

16. It was a further part of the scheme and artifice to defraud that Smith Whiley & Company and the Abell Foundation were both provided with the false and fraudulent financial statements regarding NTG, Inc. and were thereby fraudulently induced to invest in NTG, Inc. In reliance upon the false and fraudulent financial information they were provided, Smith Whiley, through the Bon Secours Community Investment Fund, and the Abell Foundation, through the Abell Venture Fund, invested approximately \$1 million and \$750,000, respectively, in NTG, Inc.

COUNT ONE
(Wire Fraud)

17. On or about January 31, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of a wire communication, signs, signals and sounds, that is, an

electronic mail message enclosing a copy of the December 2001 financial statement of NTG, Inc., from Network Technology Group, Inc. in Baltimore, Maryland to Smith Whiley & Company in Hartford, Connecticut.

18 U.S.C. § 1343

COUNT TWO
(Wire Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about March 1, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of a wire communication, signs, signals and sounds, that is, an electronic message containing wire funding instructions for the transfer of funds, from Network Technologies Group, Inc. in Baltimore, Maryland to Smith Whiley & Company in Hartford, Connecticut.

18 U.S.C. § 1343

COUNT THREE
(Wire Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about March 4, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of a wire communication, signs, signals and sounds, that is, a wire transfer of funds in the amount of \$ 965,500.00 from the account of Bon Secours Community Investment Fund at Fleet Bank in Hartford, Connecticut to the account of Network Technologies Group, Inc. at Mercantile Safe Deposit and Trust in Baltimore, Maryland.

18 U.S.C. § 1343

COUNT FOUR
(Wire Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about March 13, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of a wire communication, signs, signals and sounds, that is, an electronic message containing a copy of the financial statement for Network Technologies Group, Inc. for the month ending January, 2002, from Network Technologies Group, Inc. in Baltimore, Maryland to Smith Whiley & Company in Hartford, Connecticut.

18 U.S.C. § 1343

COUNT FIVE
(Mail Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about April 3, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be delivered by Federal Express, a private commercial interstate carrier, according to the directions thereon and at the place it was directed to be delivered, a certain envelope containing transaction documents relating to the sale of stock of Network Technology Group, Inc., from the law offices of Piper Marbury Rudnick & Wolfe, LLP in Washington, D.C. to The Abell Foundation in Baltimore, Maryland.

18 U.S.C. § 1341

COUNT SIX
(Bank Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about April 4, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, knowingly and willfully executed and attempted to execute the aforesaid scheme and artifice to defraud Mercantile Safe-Deposit and Trust Company by submitting and causing to be submitted to Mercantile a “borrowing base certificate” for the purpose of obtaining an advance of \$108,994.61, which certificate included a false and fraudulent statement of the accounts receivable of Network Technologies Group, Inc.

18 U.S.C. § 1344

COUNT SEVEN
(Bank Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about April 12, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, knowingly and willfully executed and attempted to execute the aforesaid scheme and artifice to defraud Mercantile Safe-Deposit and Trust Company by submitting and causing to be submitted to Mercantile a “borrowing base certificate” for the purpose of obtaining an advance of \$350,098.22, which certificate included a false and fraudulent statement of the accounts receivable of Network Technologies Group, Inc.

18 U.S.C. § 1344

COUNT EIGHT

(Bank Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about May 10, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, knowingly and willfully executed and attempted to execute the aforesaid scheme and artifice to defraud Mercantile Safe-Deposit and Trust Company by submitting and causing to be submitted to Mercantile a “borrowing base certificate” for the purpose of obtaining an advance of \$15,000.00, which certificate included a false and fraudulent statement of the accounts receivable of Network Technologies Group, Inc.

18 U.S.C. § 1344

COUNT NINE
(Bank Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about May 21, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, knowingly and willfully executed and attempted to execute the aforesaid scheme and artifice to defraud Mercantile Safe-Deposit and Trust Company by submitting and causing to be submitted to Mercantile a “borrowing base certificate” for the purpose of obtaining an advance of \$70,000.00, which certificate included a false and fraudulent statement of the accounts receivable of Network Technologies Group, Inc.

18 U.S.C. § 1344

COUNT TEN
(Wire Fraud)

1. The allegations contained in Count One, paragraphs one through sixteen are hereby realleged and incorporated by reference as though fully set forth herein.

2. On or about June 21, 2002, in the State and District of Maryland, and elsewhere,

**BEVERLY BAKER,
THOMAS BRAY,
VICTOR GIORDANI, JR.,
and MICHELE A. TOBIN,**

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property, did knowingly cause to be transmitted in interstate commerce by means of a wire communication, signs, signals and sounds, that is, an electronic mail message enclosing copies of the financial statements of NTG, Inc. for the one month and five months ending May 31, 2002, from Network Technology Group, Inc. in Baltimore, Maryland to Smith Whiley & Company in Hartford, Connecticut.

18 U.S.C. § 1343

Thomas M. DiBiagio
United States Attorney

A TRUE BILL:

Foreperson

Date: